IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 965 OF 1994

Sayed Hussein Sayed Aga. ... Appellant.

V/s.

The Municipal Corporation for
Greater Bombay. ... Respondent.

Mr.A.M.Saraogi with A.Palkar for the appellant.

Ms.Geeta Joglekar for the respondent.

CORAM : A.S.Oka, J.

DATED : 7th March, 2005.

ORAL JUDGMENT :

. Heard the learned counsel appearing for the parties.

2. By this Appeal from Order, the original Plaintiff has taken exception to the judgment and order dated 15th February 1994 passed by the learned trial Judge which has the effect of disposing of the notice of motion and the suit.

3. The suit was filed by the Appellant-Plaintiff in the City Civil Court at Mumbai for challenging the notice dated 4th January 1990 issued by the Respondent Corporation. The suit structure is a stall situated at S.V.Road, Near Nanavati Hospital, Vile Parle (W), Bombay- 400 056.

By the impugned notice dated 4th January 1990 the Ward Officer, K/West Ward of the Respondent Corporation informed the Appellant to demand alternative accommodation from Nanavati Hospital. By the said notice, the Appellant was directed to vacate the stall.

4. By order dated 5th February 1990, the learned trial Judge vacated earlier ad-interim order granted in the suit and made the notice of motion returnable. An Appeal from Order against the said order was preferred in this Court which was disposed of on 15th February 1990. This Court granted ad-interim injunction which was declined by the trial Court on 5th February 1990.

5. While passing the impugned order, the learned trial Judge has recorded statement of the Respondent Corporation that they will follow due process of law in respect of the suit structure. The learned Judge protected the Appellant for a period of 10 days from the date of receipt of order passed by the Respondent. There is no adjudication made by the learned trial Judge on merits of the suit.

6. On 18th June 1994 this Court admitted this Appeal for Order and granted interim relief in terms of prayer clause (a) of Civil Application No.4164 of 1994. The prayer clause (a) of the said Application reads thus:

> "(a) That pending the hearing and final disposal of the above Appeal the Respondent their servants, officers, and agents and workmen and/or any person or persons claiming through under them be restrained by an order and injunction of this Hon'ble Court removeing the Applicant's stall situate at S.V.Road Near Nanavati Hospital Compound, Vile Parle, Bombay-400 056 admeasuring about 4.3764 sq.meters."

7. The learned counsel appearing for the Appellant submitted that the challenge in the suit was to the communication dated 4th January 1990 by which the Ward Officer of the Respondent Corporation had directed the Appellant to remove structure on the footpath and, therefore the notice of motion could not have been disposed of without considering the merits of the case. The learned counsel submitted that it was the case of the Respondent Corporation that by issuing the communication dated 4th January 1990 due process of law was already followed. The learned counsel, therefore, submitted that the notice of motion ought to have been decided on merits.

8. The learned counsel for the Respondent has supported the impugned order and judgment by pointing out that the structure is on a footpath.

9. I have considered the rival submissions. In the impugned order the learned trial Judge has recorded a statement of the Respondent which reads as under:

> "Defendants state that they will follow the due process of law in respect of the structure"

On plain reading of the impugned order it is clear that what was stated before the learned Judge was that the Respondent will follow due process of law thereafter and that is the reason why the learned trial Judge has protected the Appellant for a period of 10 days from the date of service of the order being passed by the Respondent. Thus, when the learned trial Judge passed impugned order accepting the statement of the Respondent Corporation it was obvious that learned Judge never accepted that by communication dated 4th January 1990, due process of law was followed. In fact, the Respondent

Corporation notwithstanding the communication dated 4th January 1990 made a statement on 15th February 1996 that due process of law will be followed.

10. In this view of the matter, I find that the learned trial Judge was justified in disposing of the notice of motion and suit by recording the statement of the Respondent. It is obvious that if as per the said statement due process of law is followed and an order is passed by the Respondent, the Appellant - Plaintiff can always challenge the said order in accordance with law.

11. In this view of the matter, no interference with the impugned order is called for. The impugned order, as stated earlier, protects the Appellant for a period of 10 days from the date of service of notice/order issued by the Respondent after following due process of law. Hence subject to what is stated above, the Appeal from Order is disposed of with no order as to costs.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1222 OF 2004
IN
APPEAL FROM ORDER NO. 965 OF 1994

Sayed Hussein Sayed Aga. ... Appellant.

V/s.

The Municipal Corporation for
Greater Bombay. ... Respondent.

Mr.A.M.Saraogi with A.Palkar for the appellant.

Ms.Geeta Joglekar for the respondent.

CORAM : A.S.Oka, J.

DATED : 7th March, 2005.

P.C. :

. In view of disposal of the Appeal, this Civil Application does not survive. The Civil Application is rejected.

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